

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Developing a Unified Inter-carrier Compensation Regime)	CC Docket No. 01-92
)	
Petitions for Declaratory Ruling Regarding Inter-carrier Compensation for Wireless Traffic)	DA 02-2436
)	

**REPLY COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

I. Introduction

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these reply comments in the above-noted proceeding.¹ OPASTCO is a national trade association representing over 500 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 2.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. § 153(37). Roughly one-half of OPASTCO members also provide wireless service to consumers.

Numerous commenting parties agreed with OPASTCO's initial comments which demonstrated why the Commission should deny the Commercial Mobile Radio Service (CMRS) Carriers' Petition and recognize wireless termination tariffs as a lawful

¹ *Comment Sought on Petitions for Declaratory Ruling Regarding Inter-carrier Compensation for Wireless*

mechanism for rural incumbent local exchange carriers (ILECs) to recover the costs of terminating wireless traffic in the absence of a negotiated or arbitrated agreement.²

These replies concentrate on three critical facts that supporters of the CMRS Petition ignored in their comments: first, that rural ILECs' tariffs are lawful as they defer to negotiations; second, the Telecommunications Act of 1996 (1996 Act, the Act) provides requesting carriers with the ability to compel ILECs to negotiate without granting the same power to ILECs; and third, CMRS providers have incentive to obfuscate these facts in order to maintain the improper *status quo* that results in termination of traffic by rural ILECs without lawful compensation.

II. Wireless termination tariffs that defer to negotiated agreements clearly comply with the law

Supporters of the CMRS Petitioners parrot the petition's baseless argument that wireless termination tariffs are unlawful because the Commission, prior to the 1996 Act, found that tariffs filed by large ILECs at the time constituted attempts to circumvent the negotiation process.³ However, as the CMRS Petitioners are well aware, tariffs filed by rural ILECs take Sections 251 and 252 of the Act into account by explicitly deferring to agreements negotiated under the auspices of these sections. Commenters supporting the

Traffic, CC Docket No. 01-92, Public Notice, DA 02-2436 (rel. Sept. 30, 2002).

² See comments of the Alliance of Rural Independent Telephone Companies (Alliance), ICORE, Inc. (ICORE), John Staurulakis, Inc. (JSI), Michigan rural Incumbent Local Exchange Carriers (Michigan ILECs), Minnesota Independent Coalition (MIC), Missouri Independent Telephone Company Group (MITG), Missouri Small Telephone Company Group (MoSTCG), Montana Local Exchange Carriers (Montana LECs), the National Telecommunications Cooperative Association (NTCA), Oklahoma Rural Telephone Companies (Oklahoma RTCs), Rural Iowa Independent Telephone Association (RIITA), and Telecom Consulting Associates, Inc. (TCA). Notably, the Montana LECs also filed a Motion to Dismiss the CMRS Petition on the grounds that the Petition attempted to improperly preempt state law.

³ AT&T Wireless, pp. 3-4; Cingular Wireless LLC (Cingular) p. 4; Cellular Telecommunications & Internet Association (CTIA), pp. 3-6; Qwest Communications International, Inc. (Qwest), pp. 7-8; Rural Cellular Association and Rural Telecommunications Group (RCA/RTG), pp. 2-6; Sprint Corp. (Sprint), pp. 8-12; United States Cellular Corp. (US Cellular), pp. 1-3; Verizon Wireless, pp. 2-5. Notably, MIC at p. 3 highlights the fact that the Commission has previously determined that the filing of tariffs does not

CMRS Petition ignored this extremely salient fact, because they know it completely eviscerates their argument that such tariffs are unlawful. As OPASTCO and other commenters observed, it is obvious that tariffs which recognize the supremacy of negotiated agreements cannot logically be portrayed as mechanisms intended to circumvent the negotiating procedures clearly established by the Act.⁴

III. Unlike CMRS providers, rural ILECs cannot compel other parties to negotiate

Some supporters of the CMRS Petition repeat the hollow charge that rural ILECs are neglecting their duties to seek out CMRS providers to negotiate reciprocal compensation agreements.⁵ Such negotiations can and do occur, but the responsibility of initiating the process has not, and often can not, be assigned to rural ILECs. Even when rural ILECs are able to discover which CMRS providers are originating traffic that is now terminated without compensation,⁶ they are not empowered by the Act to compel the CMRS providers to negotiate in good faith.

In stark contrast, the Act gives this very power to any requesting carrier that wishes to interconnect with an ILEC.⁷ Thus, if CMRS providers desire to achieve an interconnection agreement with rural ILECs, the Act provides them with the authority to initiate negotiations that ILECs must conduct in good faith.⁸ If CMRS providers do not wish to negotiate with rural ILECs, they should be free to make this decision as long as

automatically constitute “bad faith” (citation omitted).

⁴ OPASTCO, p. 5. *See also* Alliance, pp. 5-17; Michigan ILECs, pp. 5-7; MIC, pp. 2-3; MoSTCG, pp. 3-5; NTCA, pp. 2-5.

⁵ Cingular, p. 4; CTIA, p. 5; RCA/RTG, p. 5.

⁶ Rural ILECs often do not have data available to them which is necessary to determine the source of traffic received through a tandem; *see, for example*, Alliance, p. 4; MIC, pp. 1-2; NTCA, p. 6; OPASTCO, p. 4.

⁷ 47 U.S.C. § 251(c).

rural ILECs have a means such as tariffs available in order to obtain the cost recovery assured to them by the Act.⁹ Commenters supporting the CMRS Petition again ignore the fact that the Act has presented CMRS providers with a clear process to ensure negotiations and, if necessary, binding arbitration with rural ILECs.

IV. The CMRS Petitioners and their supporters have great incentive to preserve the *status quo*, but little incentive to negotiate in good faith

Numerous commenters including OPASTCO have illustrated that the CMRS Petitioners have little incentive to initiate negotiations in order to obtain just and reasonable reciprocal compensation agreements.¹⁰ Rather than adhere to the plain language of the Act and the Commission's rules,¹¹ the CMRS Petitioners and their supporters would rather maintain the *status quo*, which allows them to obtain indirect interconnection while avoiding paying the lawful compensation the Act calls for. As many commenters observed,¹² the current *de facto* bill-and-keep arrangement is quite favorable to many CMRS providers which enjoy it at the expense of rural ILECs and their customers.¹³ It is therefore in the interests of the CMRS Petitioners and their supporters to ignore that tariffs defer to negotiated agreements and ignore that they, not

⁸ 47 U.S.C. § 252(a).

⁹ 47 U.S.C. § 252(d)(1).

¹⁰ Alliance, p. 12 (fn. 24); ICORE, p. 6; JSI, pp. 6-7; MIC, pp. 3-4; MITG, p. 8; MoSTCG, p. 16; Montana ILECs, p. 4; NTCA, p. 7; OPASTCO, p. 6; *see also* Missouri Public Service Commission, *In the Matter of Mark Twain Rural Telephone Company's Proposed Tariff to Introduce Its Wireless Termination Service*, Case No. TT-2001-139, p. 17 (issued Feb. 8, 2001).

¹¹ 47 C.F.R. §§ 51.703(a), 51.715(a).

¹² *See, for example*, JSI, p. 6; Michigan ILECs, pp. 2-4; MIC, pp. 4-6; NTCA, pp. 5-8; Oklahoma RTCs, pp. 5-10; OPASTCO, pp. 6-8.

¹³ RCA/RTG at pp. 6-7 state that bill-and-keep is, or may at some point become, an appropriate arrangement for some rural ILECs. If this is the case, the availability of wireless termination tariffs does nothing to impede the ability of individual rural ILECs and CMRS providers to agree to a bill-and-keep regime if that is appropriate to their individual circumstances. However, there is no justification for mandating bill-and-keep even for those rural ILECs that are substantially harmed by it. Therefore, RCA/RTG's uncharacteristic call for a "one-size-fits-all" approach should be rejected.

rural ILECs, are empowered by the Act to compel negotiations.

V. Conclusion

Rural ILECs are lawfully entitled to compensation for CMRS-originated calls that terminate on the ILEC's network. The Commission should therefore deny the CMRS Petitioners' request to find that rural ILECs' wireless termination tariffs are unlawful. In the process, the Commission should affirm that CMRS carriers have an obligation to provide just and reasonable compensation to rural ILECs, and that in the absence of negotiated or arbitrated agreements, wireless termination tariffs are a lawful means to achieve that end.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Stephen Pastorkovich, hereby certify that a copy of the reply comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 1st day of November, 2002, to those listed on the attached sheet.

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